

## Message Text

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ACTION EA-10

INFO OCT-01 ISO-00 SS-15 NSC-05 L-02 CIAE-00 DODE-00

INR-07 NSAE-00 PA-01 USIA-06 PRS-01 SP-02 H-02 /052 W

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R 090941Z APR 75

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 1849

C O N F I D E N T I A L MANILA 4095

E.O. 11652: GDS

TAGS: PINT RP

SUBJECT: AQUINO CASE DEVELOPMENTS

BEGIN SUMMARY: PLEADING ABSENCE OF QUORUM, SUPREME COURT HAS FAILED TO ACT ON AQUINO PETITION CHALLENGING JURISDICTION OF MILITARY COMMISSION. AQUINO HAS WAIVED RIGHT TO PARTICIPATE IN PERPETUATION HEARINGS. COMMISSION'S LEGAL EXPERT HAS UPHELD HIM BUT GOVERNMENT'S TRIAL COUNSEL HAS CHALLENGED RULING AND IT EXPECTED HE WILL BE COMPELLED TO ATTEND THROUGH REMAINDER OF HEARINGS THIS WEEK. END SUMMARY.

1. THE SUPREME COURT HAS FAILED TO ACT ON SENATOR AQUINO'S PETITION ASKING THAT IT PROHIBIT MILITARY COMMISSION NO. 2 FROM PROCEEDING WITH PERPETUATION HEARINGS. COURT EXPLAINED AQUINO PETITION MOTION INVOLVED CONSTITUTIONAL QUESTION REQUIRING QUORUM OF 10 JUSTICES. SUPREME COURT SAID THAT ALTHOUGH IT IS PRESENTLY COMPOSED OF 10 JUSTICES, ONLY 9 QUALIFIED TO DECIDE ON CASE SINCE CHIEF JUSTICE DISQUALIFIED SINCE HE WAS NAMED RESPONDENT IN AQUINO POSITION. SUPREME COURT, HOWEVER, RESOLVED PERMIT QUINO'S COUNSEL SENATOR TANADA TO "VISIT AND CONFER FREELY AND PRIVATELY WITH AQUINO AT REASONABLE HOURS ANY DAY OF THE WEEK" ALTHOUGH THIS AUTHORIZATION "SUBJECT TO ARMED FORCES SECURITY REGULATIONS."

2. AT MILITARY COMMISSION HEARING APR 2, AQUINO ANNOUNCED  
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HE WAS WAIVING HIS RIGHTS TO PARTICIPATE IN PERPETUATION

HEARINGS. COMMISSION'S LEGAL EXPERT RULED AQUINO COULD WAIVE RIGHTS BUT THIS RULING HAS BEEN CHALLENGED BY TRIAL COUNSEL LT. COL. SISON. PRESS REPORTS THAT QUINO SAID IN TYPICAL MELODRAMATIC FASHION "I KNOW I AM INVITING A DEATH SENTENCE BUT THIS IS MY OWN CHOICE." COMMISSION HAS ADJOURNED UNTIL APR 3 WHEN IT WILL ANNOUNCE WHETHER AQUINO MUST BE PHYSICALLY PRESENT AT PERPERTUATION HEARINGS. AQUINO'S REQUEST TO RETURN TO HIS CELL CAME AFTER MILITARY COMMISSION AFFIRMED IT HAD JURISDICTION AND COULD CONDUCT PERPETUATION PROCEEDINGS.

3. AQUINO'S HEARING WAS APPARENTLY DRAMATIC. PRESS REPORTS THAT ON TWO OCCASIONS SPECTATORS' APPLAUSE PROMOTED COMMISSIONCHAIRMAN GENERAL SYJUCO TO THREATEN TO HAVE ANYONE APPLAUDING ARRESTED OR THROWN OUT OF COURT. PROSECUTION ALSO INDULGED IN AD HOMINEM ARGUMENTS. AT ONE POINT, COL. SISON STATED "MR. AQUINO HAS YET TO GROW UP AND FIGHT LIKE A MAN."

4. COMMENT: PRESUMABLY COURT'S DECISION TO ADJOURN UNTIL APR 3 WILL PERMIT IT TO HEAR FROM PRESIDENT HOW HE WANTS EVENTS TO PROCEED; I.E., (A) SUSTAIN LEGAL OFFICER'S RULING THAT AQUINO CAN WAIVE RIGHTS TO BE PRESENT AT TRIAL, OR (B) SUPPORT TRIAL COUNSEL SISON'S VIEW THAT AQUINO'S PRESENCE SHOULD BE COMPELLED. WE UNDERSTAND DECISION HAS BEEN MADE THAT AQUINO WILL BE REQUIRED TO ATTEND AND THAT THIS IS ANTICIPATED BY DEFENSE. SUPREME COURT'S STATEMENT THAT IT CANNOT HEAR AQUINO'S PETITION BECAUSE OF LACK OF A QUORUM WILL DO NOTHING TO DISCOURAGE POPULAR IMPRESSION IT IS TOTALLY UNDER MARCOS'S THUMB.  
SULLIVAN

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**To:** STATE  
**Type:** TE  
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